IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/07/2004

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

C.R.P.(PD) NO.2686 OF 2003
AND
C.M.P.NO.20270 OF 2003

1. Jothi
2. V.Moorthy alias Yoshuva Moorthy .. Petitioners

-Vs-

1. Evangelical Church of India
rep. by Rev.Father Bishop Dr.Ezra
Sargunam

2. M. Selvamani
3. Pazhani alias Lawrence
4. Yovan .. Respondents

This civil revision petition is preferred under Article 227 of Constitution of India against the fair and decretal order passed by the learned 11th Assistant, Court of City Civil, Madras in IA No.13426 of 2 003 in OS No.6715 of 1997 dated 15.9.2003.

!For Petitioners : Mr.R.Subramanian

^For Respondents : Mr.Mahimai Raj

:ORDER

Aggrieved over the order of the learned 11th Assistant Judge, City Civil Court, Madras allowing the application for joint trial filed by the respondents herein, the revision petitioner herein has filed this petition.

2. As could be seen from the available materials and the submissions made by the learned counsel for either side, a suit was filed by the petitioners herein before the said Court under Section 6 of the Specific Relief Act in OS No.6715 of 1997 alleging that they were in possession of the suit immovable property mentioned in the plaint and they were forcibly dispossessed, and hence they have got to be put in possession. It is not in controversy that the respondents herein, who were defendants in that suit,

appeared and filed their written statement also. Pending suit, the respondents herein have filed a suit for delivery of possession in OS No.935 of 2002 in respect of the properties mentioned therein. While the matter is thus, the respondents herein filed an application for joint trial of both the suits alleging that the parties are same and the properties in both the suits are also same and in order to avoid the precious time of the court and for appreciation of evidence, both the suits have got to be tried jointly. The revision petitioners herein were given an opportunity to file counter. The lower court, after hearing both sides, has allowed the application and the order of the lower court is being challenged before this Court.

3. Heard both sides. From the submissions made, it could be abundantly clear that the revision petitioners filed a suit under Section 6 of the Specific Relief Act alleging that they were dispossessed forcibly, and hence, they should be put in possession of the property. Originally, the issue in respect of the title was included and the same was challenged before this Court. By an order of this Court, the issue regarding title was subsequently deleted. It is needless to say that in a suit under Section 6 of the Specific Relief Act, the title is not a primary consideration to be considered by the Court. The respondents have also filed a suit for recovery of possession from the petitioners herein, in which the title has got to be decided. Under the stated circumstances, this Court is of the considered opinion that both the cases need not be tried jointly as found by the lower court. But, at the same time, this Court is able to see some force in the contention of the learned counsel for the respondents' side that there should be an appreciation of evidence. Under the stated circumstances, though not the suits to be tried jointly, they should be simultaneously tried by the said Court.

4. Accordingly, the lower court is directed to take both the suits and try simultaneously and dispose of the same, in accordance with law, within a period of three months herefrom and report to this Court. This Civil revision petition is ordered accordingly. Consequently, connected CMP is closed.

Index : Yes
Internet : Yes

vvk

To

11th Assistant City Civil Judge, Madras

□